

As Introduced

**132nd General Assembly
Regular Session
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S. B. No. 280

Senator Eklund

A BILL

To amend section 2315.21 of the Revised Code to 1
expand the exemption from punitive or exemplary 2
damages limitations in tort law that is provided 3
with respect to an act resulting in a felony 4
conviction involving purposeful or knowing 5
conduct so that it also applies when the act 6
results in a felony conviction for a strict 7
liability offense. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2315.21 of the Revised Code be 9
amended to read as follows: 10

Sec. 2315.21. (A) As used in this section: 11

(1) "Tort action" means a civil action for damages for 12
injury or loss to person or property. "Tort action" includes a 13
product liability claim for damages for injury or loss to person 14
or property that is subject to sections 2307.71 to 2307.80 of 15
the Revised Code, but does not include a civil action for 16
damages for a breach of contract or another agreement between 17
persons. 18

(2) "Trier of fact" means the jury or, in a nonjury 19

action, the court. 20

(3) "Home" has the same meaning as in section 3721.10 of 21
the Revised Code. 22

(4) "Employer" includes, but is not limited to, a parent, 23
subsidiary, affiliate, division, or department of the employer. 24
If the employer is an individual, the individual shall be 25
considered an employer under this section only if the subject of 26
the tort action is related to the individual's capacity as an 27
employer. 28

(5) "Small employer" means an employer who employs not 29
more than one hundred persons on a full-time permanent basis, 30
or, if the employer is classified as being in the manufacturing 31
sector by the North American industrial classification system, 32
"small employer" means an employer who employs not more than 33
five hundred persons on a full-time permanent basis. 34

(B) (1) In a tort action that is tried to a jury and in 35
which a plaintiff makes a claim for compensatory damages and a 36
claim for punitive or exemplary damages, upon the motion of any 37
party, the trial of the tort action shall be bifurcated as 38
follows: 39

(a) The initial stage of the trial shall relate only to 40
the presentation of evidence, and a determination by the jury, 41
with respect to whether the plaintiff is entitled to recover 42
compensatory damages for the injury or loss to person or 43
property from the defendant. During this stage, no party to the 44
tort action shall present, and the court shall not permit a 45
party to present, evidence that relates solely to the issue of 46
whether the plaintiff is entitled to recover punitive or 47
exemplary damages for the injury or loss to person or property 48

from the defendant. 49

(b) If the jury determines in the initial stage of the 50
trial that the plaintiff is entitled to recover compensatory 51
damages for the injury or loss to person or property from the 52
defendant, evidence may be presented in the second stage of the 53
trial, and a determination by that jury shall be made, with 54
respect to whether the plaintiff additionally is entitled to 55
recover punitive or exemplary damages for the injury or loss to 56
person or property from the defendant. 57

(2) In a tort action that is tried to a jury and in which 58
a plaintiff makes a claim for both compensatory damages and 59
punitive or exemplary damages, the court shall instruct the jury 60
to return, and the jury shall return, a general verdict and, if 61
that verdict is in favor of the plaintiff, answers to an 62
interrogatory that specifies the total compensatory damages 63
recoverable by the plaintiff from each defendant. 64

(3) In a tort action that is tried to a court and in which 65
a plaintiff makes a claim for both compensatory damages and 66
punitive or exemplary damages, the court shall make its 67
determination with respect to whether the plaintiff is entitled 68
to recover compensatory damages for the injury or loss to person 69
or property from the defendant and, if that determination is in 70
favor of the plaintiff, shall make findings of fact that specify 71
the total compensatory damages recoverable by the plaintiff from 72
the defendant. 73

(C) Subject to division (E) of this section, punitive or 74
exemplary damages are not recoverable from a defendant in 75
question in a tort action unless both of the following apply: 76

(1) The actions or omissions of that defendant demonstrate 77

malice or aggravated or egregious fraud, or that defendant as 78
principal or master knowingly authorized, participated in, or 79
ratified actions or omissions of an agent or servant that so 80
demonstrate. 81

(2) The trier of fact has returned a verdict or has made a 82
determination pursuant to division (B) (2) or (3) of this section 83
of the total compensatory damages recoverable by the plaintiff 84
from that defendant. 85

(D) (1) In a tort action, the trier of fact shall determine 86
the liability of any defendant for punitive or exemplary damages 87
and the amount of those damages. 88

(2) Except as provided in division (D) (6) of this section, 89
all of the following apply regarding any award of punitive or 90
exemplary damages in a tort action: 91

(a) The court shall not enter judgment for punitive or 92
exemplary damages in excess of two times the amount of the 93
compensatory damages awarded to the plaintiff from that 94
defendant, as determined pursuant to division (B) (2) or (3) of 95
this section. 96

(b) If the defendant is a small employer or individual, 97
the court shall not enter judgment for punitive or exemplary 98
damages in excess of the lesser of two times the amount of the 99
compensatory damages awarded to the plaintiff from the defendant 100
or ten ~~percent~~ per cent of the employer's or individual's net 101
worth when the tort was committed up to a maximum of three 102
hundred fifty thousand dollars, as determined pursuant to 103
division (B) (2) or (3) of this section. 104

(c) Any ~~attorneys~~ attorney's fees awarded as a result of a 105
claim for punitive or exemplary damages shall not be considered 106

for purposes of determining the cap on punitive damages.	107
(3) No award of prejudgment interest under division (C) (1)	108
of section 1343.03 of the Revised Code shall include any	109
prejudgment interest on punitive or exemplary damages found by	110
the trier of fact.	111
(4) In a tort action, the burden of proof shall be upon a	112
plaintiff in question, by clear and convincing evidence, to	113
establish that the plaintiff is entitled to recover punitive or	114
exemplary damages.	115
(5) (a) In any tort action, except as provided in division	116
(D) (5) (b) or (6) of this section, punitive or exemplary damages	117
shall not be awarded against a defendant if that defendant files	118
with the court a certified judgment, judgment entries, or other	119
evidence showing that punitive or exemplary damages have already	120
been awarded and have been collected, in any state or federal	121
court, against that defendant based on the same act or course of	122
conduct that is alleged to have caused the injury or loss to	123
person or property for which the plaintiff seeks compensatory	124
damages and that the aggregate of those previous punitive or	125
exemplary damage awards exceeds the maximum amount of punitive	126
or exemplary damages that may be awarded under division (D) (2)	127
of this section against that defendant in the tort action.	128
(b) Notwithstanding division (D) (5) (a) of this section and	129
except as provided in division (D) (6) of this section, punitive	130
or exemplary damages may be awarded against a defendant in	131
either of the following types of tort actions:	132
(i) In subsequent tort actions involving the same act or	133
course of conduct for which punitive or exemplary damages have	134
already been awarded, if the court determines by clear and	135

convincing evidence that the plaintiff will offer new and 136
substantial evidence of previously undiscovered, additional 137
behavior of a type described in division (C) of this section on 138
the part of that defendant, other than the injury or loss for 139
which the plaintiff seeks compensatory damages. In that case, 140
the court shall make specific findings of fact in the record to 141
support its conclusion. The court shall reduce the amount of any 142
punitive or exemplary damages otherwise awardable pursuant to 143
this section by the sum of the punitive or exemplary damages 144
awards previously rendered against that defendant in any state 145
or federal court. The court shall not inform the jury about the 146
court's determination and action under division (D) (5) (b) (i) of 147
this section. 148

(ii) In subsequent tort actions involving the same act or 149
course of conduct for which punitive or exemplary damages have 150
already been awarded, if the court determines by clear and 151
convincing evidence that the total amount of prior punitive or 152
exemplary damages awards was totally insufficient to punish that 153
defendant's behavior of a type described in division (C) of this 154
section and to deter that defendant and others from similar 155
behavior in the future. In that case, the court shall make 156
specific findings of fact in the record to support its 157
conclusion. The court shall reduce the amount of any punitive or 158
exemplary damages otherwise awardable pursuant to this section 159
by the sum of the punitive or exemplary damages awards 160
previously rendered against that defendant in any state or 161
federal court. The court shall not inform the jury about the 162
court's determination and action under division (D) (5) (b) (ii) of 163
this section. 164

(6) Division (D) (2) of this section does not apply to a 165
tort action where the alleged injury, death, or loss to person 166

or property resulted from the defendant acting ~~with one or more~~ 167
~~of the culpable mental states of purposely and knowingly as~~ 168
~~described in section 2901.22 of the Revised Code in violation of~~ 169
a law and when the defendant has been convicted of or pleaded 170
guilty to a criminal offense that is a felony, that is a strict 171
criminal liability offense or that had as an element of the 172
offense one or more of the culpable mental states of purposely 173
and knowingly as described in ~~that~~ section 2901.22 of the 174
Revised Code, and that is the basis of the tort action. 175

(E) This section does not apply to tort actions against 176
the state in the court of claims, including, but not limited to, 177
tort actions against a state university or college that are 178
subject to division (B)(1) of section 3345.40 of the Revised 179
Code, to tort actions against political subdivisions of this 180
state that are commenced under or are subject to Chapter 2744. 181
of the Revised Code, or to the extent that another section of 182
the Revised Code expressly provides any of the following: 183

(1) Punitive or exemplary damages are recoverable from a 184
defendant in question in a tort action on a basis other than 185
that the actions or omissions of that defendant demonstrate 186
malice or aggravated or egregious fraud or on a basis other than 187
that the defendant in question as principal or master knowingly 188
authorized, participated in, or ratified actions or omissions of 189
an agent or servant that so demonstrate. 190

(2) Punitive or exemplary damages are recoverable from a 191
defendant in question in a tort action irrespective of whether 192
the plaintiff in question has adduced proof of actual damages. 193

(3) The burden of proof upon a plaintiff in question to 194
recover punitive or exemplary damages from a defendant in 195
question in a tort action is one other than clear and convincing 196

evidence.	197
(4) Punitive or exemplary damages are not recoverable from a defendant in question in a tort action.	198 199
(F) If the trier of fact is a jury, the court shall not instruct the jury with respect to the limits on punitive or exemplary damages pursuant to division (D) of this section, and neither counsel for any party or a witness shall inform the jury or potential jurors of those limits.	200 201 202 203 204
(G) When determining the amount of an award of punitive or exemplary damages against either a home or a residential facility licensed under section 5123.19 of the Revised Code, the trier of fact shall consider all of the following:	205 206 207 208
(1) The ability of the home or residential facility to pay the award of punitive or exemplary damages based on the home's or residential facility's assets, income, and net worth;	209 210 211
(2) Whether the amount of punitive or exemplary damages is sufficient to deter future tortious conduct;	212 213
(3) The financial ability of the home or residential facility, both currently and in the future, to provide accommodations, personal care services, and skilled nursing care.	214 215 216 217
Section 2. That existing section 2315.21 of the Revised Code is hereby repealed.	218 219